

CALENDAR ITEM

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INFORMATIONAL UPDATE ON THE PORT OF LONG BEACH COMMUNITY IMPACT STUDY AND POTENTIAL MITIGATION MEASURES TO ADDRESS DIRECT IMPACTS OF PORT-RELATED OPERATIONS ON NEIGHBORING COMMUNITIES

INTRODUCTION:

The California State Lands Commission oversees the management of sovereign Public Trust lands and assets by legislative grantees who manage these lands in trust on behalf of the State. (Public Resources Code section 6301 et seq.; *State of California ex rel. State Lands Commission v. County of Orange* (1982) 134 Cal.App.3d 20, 23.)

The City of Long Beach, acting by and through the Port of Long Beach (Port), is a trustee of the sovereign tide and submerged lands located within the Long Beach Harbor District. The Port is one of the busiest seaports in the world, supporting over a million jobs nationally and generating billions of dollars in economic activity each year. The Port encompasses 7,600 acres of land and water and includes 22 shipping terminals.

The Port is managed through an independent city department, the Long Beach Harbor Department, and is governed by a five-member Board of Harbor Commissioners. The Harbor Commissioners are appointed by the Mayor and confirmed by the Long Beach City Council.

The purpose of this staff report is to provide an update regarding the Port's efforts to mitigate the direct impacts of Port-related operations on neighboring communities through the adoption of the Port's Community Impact Study.

STATE LANDS COMMISSION JURISDICTION AND AUTHORITY:

The California Legislature is vested with the authority to enact laws involving the State's sovereign Public Trust lands. Since 1851, the Legislature has periodically transferred portions of the State's Public Trust lands to over 80 local governmental entities for management purposes, including to California's five major ports.

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These granted lands and resources are held in trust for the people of California and must be used for Public Trust purposes, including water-related commerce, navigation and fisheries. The granting language conveys the State's legal title to these sovereign lands subject to certain terms and conditions and subject to the common law Public Trust Doctrine. The local government is a trustee for the lands and any revenue generated from the lands and resources. Public Trust revenues are subject to the same restrictions as the lands themselves. Thus, any use of trust lands or revenues generated from these lands for non-trust or purely local purposes is a violation of the trustee's fiduciary duty to the trust and its beneficiaries.

The statutory grant creates a trust in which the local government is the trustee, the State is the trustor and the representative of the people of California are the beneficiaries. The trust is held for the benefit of the statewide public. Any residual interest in the State as to these granted lands is vested in the Commission. Public Resources Code section 6301 provides, among other things, that: "[a]ll jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the Commission."

The Commission represents the statewide public interest to ensure that local trustees operate their trust grants in conformance with the California Constitution, granting statutes, and the Public Trust Doctrine. This oversight has ranged from working cooperatively to assist local trustees on issues involving proper trust land use and trust expenditures, to judicial confrontations involving billions of dollars of trust assets, e.g., serving as *amicus curiae* in *Mallon v. City of Long Beach* (1955) 44Cal.2d 199, 211 and as plaintiff in *State of California ex rel. State Lands Commission v. County of Orange* (1982) 134Cal.App.3d 20.

COMMUNITY IMPACT STUDY:

In May 2016, recognizing that its operations create impacts that have accumulated for years, the Port completed a Community Impact Study to identify the direct impacts of Port-related operations on the local community and community-based mitigation measures to relieve these impacts. The study was released for public comment on April 22, 2016, and was approved by the Board of Harbor Commissioners on July 25, 2016.

Port operations in California have varying degrees of impacts on the environment and the communities surrounding their operations, but ports located on legislatively granted Public Trust lands are restricted in how they can mitigate these impacts off Port property. Through the Community Impact Study, the Port

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acted proactively to provide legal justification to fund categories of projects that maximize the environmental benefit to neighboring communities and leverage limited Port funds. In the study, the Port applied the complex legal limitations associated with Public Trust lands and assets accurately to design a framework to identify appropriate mitigation projects, consistent with applicable law.

The Port manages sovereign tide and submerged lands within its jurisdiction subject to its legislative trust grant, the California Constitution, and the Public Trust Doctrine. The trust grant, California Constitution, and Public Trust Doctrine limit how and where the Port can spend its Public Trust revenues. This limitation is particularly important when spending Port dollars off Port property for community mitigation projects. Ports may conduct discretionary mitigation that is not CEQA-mandated, such as offsetting impacts from general Port operations or impacts that accumulated over the years, but only under certain conditions. Those conditions are: 1) that Port operations are directly responsible for the impacts being mitigated; 2) there is a nexus between the direct impacts and the proposed mitigation; 3) the proposed mitigation is proportional to the impacts; and 4) the mitigation is not inconsistent with the Public Trust Doctrine or the Port's overall management responsibilities for its granted Public Trust lands.

The Port may only expend trust revenues off Port property when they are mitigating for direct impacts. Direct impacts are impacts from land within the Port's jurisdiction as well as impacts from Port-related sources, such as cargo vessels, originating from or destined for the Port. The Port may not use Public Trust revenues to mitigate impacts associated with third-party operations on non-Port property, such as container storage yards or warehouses. These uses may negatively affect the community but the impacts cannot be directly attributed to the Port. Activities by third parties on property not under the Port's jurisdiction are properly regulated by other local, state and federal government bodies.

The Port's Community Impact Study analyzes four key resource areas that are most strongly associated with community impacts outside the Port's jurisdiction: air quality, traffic, noise, and water quality. Through a CEQA-like analysis, the Study, using a science-based approach, provides a sound legal justification for expending Public Trust funds for certain categories of mitigation projects located off-Port property by demonstrating a direct nexus between Port operations and those environmental impacts and quantifying the proportion attributable to Port operations. Importantly, the Study appropriately focuses on the direct impacts of the Port's operations and proposes potential mitigation strategies that avoid, minimize, rectify or reduce the impacts over time.

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The Community Impact Study is a framework for identifying and analyzing proposed mitigation projects. Each proposed project that the Port seeks to fund must be carefully analyzed on its own merits and determined to be consistent with the body of law governing the use of Port funds. There is a long history of court decisions prohibiting the use of Public Trust funds for municipal functions and emphasizing the Port's fiduciary duties to manage trust assets. Because of these complex legal restrictions, Port staff involved Commission staff early in the process of developing the Study and continued seeking staff input as the process evolved. This early engagement and collaboration is beneficial and contributed to a document with strong legal justification that should help guide the Port in funding appropriate mitigation projects in accordance with applicable laws. Staff anticipates that the Study will be valuable to the Port in identifying projects that alleviate cumulative environmental impacts of Port operations in a manner that is consistent with the Public Trust. Overall, the draft Study appears to provide a model approach for developing a framework for identifying appropriate projects for mitigating Port impacts. Commission staff will continue to work with the Port in using the Study to analyze proposed projects.

OTHER PERTINENT INFORMATION:

1. The City of Long Beach, acting by and through the Port of Long Beach, is a trustee of sovereign tide and submerged lands granted by the Legislature under Chapter 676, Statutes of 1911 and as amended; Chapter 102, Statutes of 1925 and as amended; and Chapter 158, Statutes of 1935.
2. This informational item and staff's collaboration with the Port is consistent with Strategy 1.2 of the Commission's Strategic Plan to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, are consistent with the evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access and complex land use planning and marine freight transportation systems.